

Remarks

This Amendment is in response to the Office Action dated **January 29, 2009**.

The Office Action rejected claims 1, 20-24, 26-30 and 33 under 35 USC § 103 over Callol (US 6,585,757) in view of Globerman (US 6,428,570); rejected claims 1, 3, 20, 23, 24, 26-28, 30, 33 and 40 under 35 USC § 103 over McGuiness (US 6,102,943) in view of Globerman; rejected claims 8-11, 13-15 and 34-37 under 35 USC § 103 over Callol in view of Globerman in further view of Bashiri et al. (US 6,165,178) (hereinafter “Bashiri”); rejected claim 12 under 35 USC § 103 over Callol in view of Globerman and Bashiri in further view of Camrud et al. (US 6,699,280) (hereinafter “Camrud”); and rejected claims 16-19, 44 and 45 under 35 USC § 103 over Callol in view of McGuiness and Bashiri in further view of Ravenscroft (US 5,702,418).

Claim 9 is amended to fix a typographical error. In light of the foregoing amendments and following comments, Applicants request reconsideration.

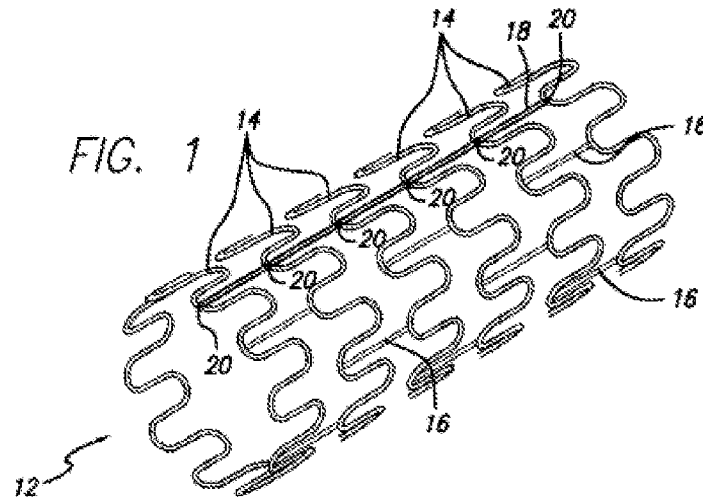
Claim Rejections - § 103

The Office Action rejected independent claim 1 over Callol in view of Globerman. Neither Callol nor Globerman, whether considered independently or in combination, teach or suggest a stent having:

a plurality of interconnected stent members, the stent members consisting of first stent members and second stent members, each of the first stent members being oriented in a substantially longitudinal direction in the unexpanded state and the expanded state, each of the second stent members being oriented in a substantially longitudinal direction in the unexpanded state and being oriented in a substantially circumferential direction in the expanded state...

Therefore, independent claim 1 is patentable over Callol in view of Globerman and Applicants request withdrawal of the rejection.

As shown below in Figure 1, Callol discloses a stent 12 having “individual rings 14 [that] are joined by spines 16, 18 ... longitudinally oriented along the entire stent.”



Referring to Callol in rejecting claim 1, the Office Action states:

Regarding the limitation of the stent members consisting of first and second stent members, the curved portion of (14) can be considered a bridge that is not one of the claimed plurality of interconnected stent members. In other words, the transitional phrase of “comprising” in line 3 of the claim allows for additional elements of the stent. The use of “consisting” for the stent members only limits what is considered the plurality of stent members to the first and second stent members.

Pages 4 of the Office Action.

Although Office Action asserts that the “use of ‘consisting’ for the stent members only limits what is considered the plurality of stent members to the first and second stent members,” Applicants note that the terms of the claim must be construed consistently with the specification. In other words, use of the words “consisting of” in the context of “stent members” prohibits the stent from having “stent members” in addition to first stent members and second stent members.

The specification must be considered when construing claim terms. MPEP section 2111 states, “[d]uring patent examination, the pending claims must be “‘given their broadest reasonable interpretation consistent with the specification.’” quoting Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). The court in Phillips further stated that “[t]his court and its predecessors have long emphasized the importance of the specification in claims construction.” “The words of patent claims have the meaning and scope with which

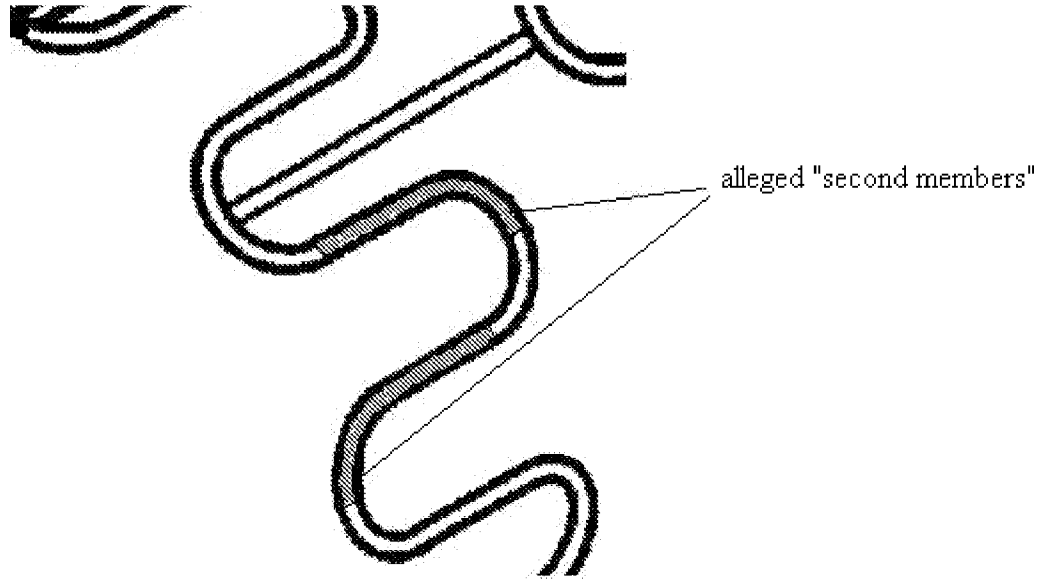
they are used in the specification and the prosecution history.” quoting Moba, B.V. v. Diamond Automation, Inc., 325 F.3d 1306, 1315 [66 USPQ2d 1429] (Fed. Cir. 2003). ““The claims are directed to the invention that is described in the specification; they do not have meaning removed from the context from which they arose.”” Id., quoting Netword, LLC v. Centraal Corp., 242 F.3d 1347, 1352 [58 USPQ2d 1076] (Fed. Cir. 2001). ““A fundamental rule of claim construction is that terms in a patent document are construed with the meaning with which they are presented in the patent document. Thus claims must be construed so as to be consistent with the specification, of which they are a part.”” Id., quoting Merck & Co. v. Teva Pharms. USA, Inc., 347 F.3d 1367, 1371 [68 USPQ2d 1857] (Fed. Cir. 2003).

The specification refers to “stent members” alternatively as “struts.” Page 7, line 22. Clearly the so-called “bridge” of Callol is a “strut.” Thus, the “bridge” of Callol must be considered a “stent member,” as well.

Although the “bridge” of Callol is a stent member, it is neither a “first stent member” nor a “second stent member” as recited in claim 1. The “bridge” of Callol is not “oriented in a substantially longitudinal direction in the unexpanded state and the expanded state” or “oriented in a substantially longitudinal direction in the unexpanded state and being oriented in a substantially circumferential direction in the expanded state,” as are the first and second stent members of the immediate claim. The “bridge” of Callol is oriented in some direction that is partially longitudinal and partially circumferential. Thus, although Callol discloses “strut members,” it fails to teach or suggest the stent of claim 1.

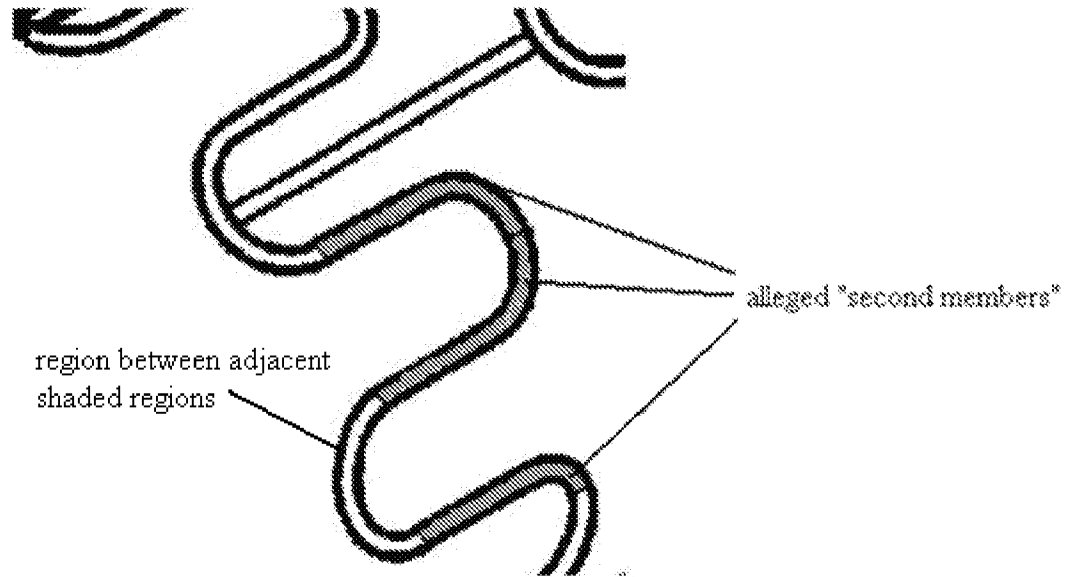
The Office Action further asserts that “if about half of the curved portion of (14) along with an adjacent entire straight portion of (14) is considered a second member, then the second member can be considered substantially longitudinal in the unexpanded state since a greater length of the second member is longitudinally directed.” Office Action page 5.

Even if the Office Action’s assertion is accepted, for the sake or argument only, Callol still fails to disclose the stent claimed in claim 1. For example, if the shaded regions (shown below) of Callol are considered “second members” as suggested by the Office Action, Callol fails to teach or disclose the remaining limitations of claim 1.



In viewing the annotated portion of Figure 1 of Callol (directly above), if the shaded regions are “second members” as suggested by the Office Action, then Callol either (1) fails to teach or suggest first stent members as claimed, or (2) teaches additional stent members beyond first stent members and second stent members. For example, if the region between adjacent alleged “second members” is considered a “first stent member,” then it is not “oriented in a substantially longitudinal direction in the unexpanded state,” as is claimed. Alternatively, if this region is not considered a “first stent member,” then the stent has additional stent members beyond “first stent members” and “second stent members,” and Callol fails to satisfy the “consisting of” language of the immediate claim.

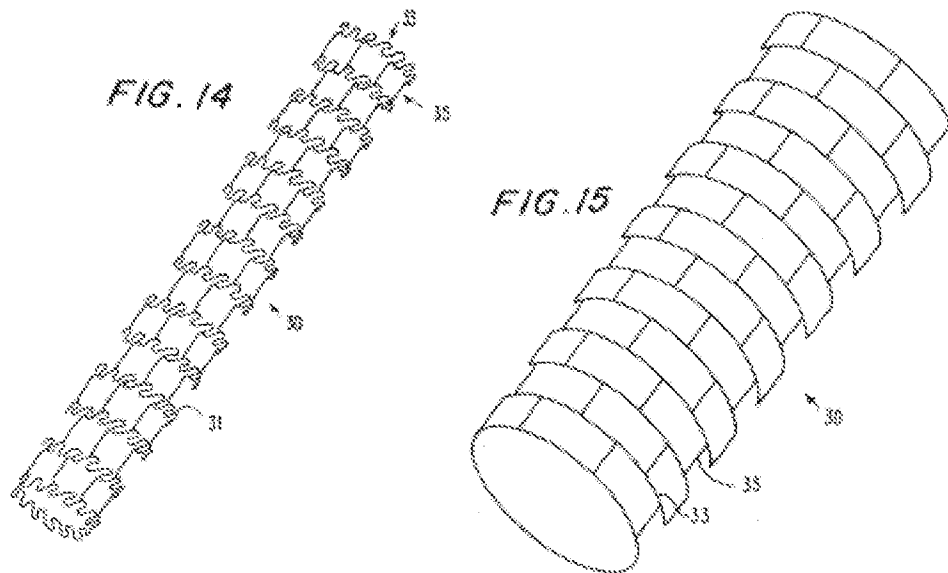
Alternatively, a second version of the annotated portion of Figure 1 of Callol is shown below.



In viewing a second version of the annotated portion of Figure 1 of Callol, (directly above), if the shaded regions are “second members” as suggested by the Office Action, then Callol still fails (1) to teach or suggest first stent members as claimed, or (2) teaches additional stent members beyond first stent members and second stent members. For example, if the region between adjacent alleged “second members” is considered a “first stent member,” then it is not “oriented in a substantially longitudinal direction in the unexpanded state,” as is claimed. Alternatively, if this region is not considered a “first stent member,” then the stent has additional stent members beyond “first stent members” and “second stent members,” and Callol fails to satisfy the “consisting of” language of the immediate claim.

The Office Action further asserts that “Globerman discloses that it is well known in the art to fully expand a similarly wavy strut so that portions of the strut are longitudinally directed when a stent is in its unexpanded state become circumferentially directed in the stent’s expanded configuration (figs. 14, 15).”

As shown below, figures 14 and 15 of Globerman depict a stent having “radial rings 22 [that] are connected with longitudinal connectors 35.” Column 7, lines 24-25. “FIG. 15 shows the stent 30 of FIG. 14 in an expanded configuration...” Column 7, lines 29-30.



The “windings 31” of Globerman are not analogous to the “first stent members” and “second stent members” as claimed in immediate claim 1. The stent of Globerman has “stent members” or “struts” that are not “oriented in a substantially longitudinal direction in the unexpanded state,” as is claimed. Globerman fails to teach or suggest the claimed stent for essentially the same reasons discussed above with respect to Callol. Therefore, claim 1 is patentable over Callol in view of Globerman.

The Office Action rejected claims 1, 3, 20, 23, 24, 26-28, 30, 33 and 40 under 35 USC § 103 over McGuiness (US 6,102,943) in view of Globerman. The Office again relies on Globerman, asserting “Globerman discloses that it is well known in the art to fully expand a similarly wavy strut so that portions of the strut are longitudinally directed when a stent is in its unexpanded state become circumferentially directed in the stent’s expanded configuration (figs. 14, 15).” Office Action page 5, paragraph 15.

As discussed above, Globerman does not teach or suggest a stent having “a plurality of interconnected stent members, the stent members consisting of first stent members and second stent members, each of the first stent members being oriented in a substantially longitudinal direction in the unexpanded state and the expanded state, each of the second stent members being oriented in a substantially longitudinal direction in the unexpanded state and being oriented in a substantially circumferential direction in the expanded state,” as is claimed in claim 1.

In the immediate claim, all of the stent members are either first stent members or

second stent members being oriented in a substantially longitudinal direction in the unexpanded state. In contrast, the stent of Globerman has stent members that are oriented in a circumferential direction in an unexpanded state.

Thus, claim 1 is patentable over Globerman, and patentable over McGuiness in view of Globerman. Therefore, Applicants request withdrawal of the rejection of independent claim 1.

The Office Action further rejected claims 8-11, 13-15 and 34-37 under 35 USC § 103 over Callol in view of Globerman in further view of Bashiri; rejected claim 12 under 35 USC § 103 over Callol in view of Globerman and Bashiri in further view of Camrud; and rejected claims 16-19, 44 and 45 under 35 USC § 103 over Callol in view of McGuiness and Bashiri in further view of Ravenscroft.

None of Bashiri, Camrud, McGuiness, and Ravenscroft remedy the deficiencies of Callol and Globerman, discussed above. Therefore, claims 8-11, 12, 13-15, 16-19, 34-37, 44, and 45 are patentable over the cited art.

All of claims 3, 8-24, 26-30, 33-37, 40, 44 and 45 depend either directly or indirectly from independent claim 1. Therefore, these claims are patentable for at least the reasons discussed with respect to independent claim 1. Consequently, Applicants request withdrawal of the rejection of claims 3, 8-24, 26-30, 33-37, 40, 44 and 45.

Ultimately, the “consisting of” language of claim 1 properly limits “stent members” to “first stent members” and “second stent members,” and the term “stent members” must be construed in light of the specification. Callol and Globerman teach stent members in addition to “first stent members” and “second stent members.” Therefore, Callol and Globerman fail to teach or suggest the stent assembly of claim 1, and claim 1 is patentable over the cited art.

Conclusion

Based on at least the foregoing remarks, Applicants request withdrawal of the rejections and reconsideration of all claims. Favorable consideration and prompt allowance of claims 1, 3, 8-24, 26-30, 33-37, and 40-45 is earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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